IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 32619 of 2007(G)

PETITIONER:

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1. RANI, D/O. JERTHOSH,
   AGED 42, J.J BHAVAN, AZHAMKALPURAYIDOM,
   PUTHIYALTHURA P.O.

2. DOMINIC, AGED 38,
   S/O. MARSALIN, J.J. BHAVAN, AZHAMKAL PURAYIDOM,
   PUTHIYALTHURA P.O.

3. IRSHANE, D/O. RANI,
   AGED 14, J.J.BHAVAN, AZHAMKAL PURAYIDOM,
   PUTHIYALTHURA P.O.
   THE 3RD PETITIONER BEING MINOR IS REPRESENTED BY
   PETITIONER NO.2 WHO NONE OTHER THAN THE MOTHER.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

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1. THE STATE OF KERALA,
   REPRESENTED BY THE PRINCIPAL SECRETARY,
   DEPARTMENT OF EXCISE, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER,
   OFFICE OF THE EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER,
   OFFICE OF THE ASSISTANT EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM.

4. THE DISTRICT COLLECTOR,
   COLLECTORATE, THIRUVANANTHAPURAM.

5. THE TAHSILDAR (RR), TALUK OFFICE,
   NEYYATTINKARA.

6. THE VILLAGE OFFICER,
KARUMKULAM VILLAGE, PUTHIYALTHURA P.O.

BY GOVERNMENT PLEADER ANU SIVARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

W.P.(C). 32619/2007

Dated this the 14th day of November, 2007

JUDGMENT

The second petitioner was a licensee of toddy shops. The property of the first petitioner, who is sister of the second petitioner, is now under attachment. Third petitioner is the daughter of the first petitioner.

2. According to the petitioners, though following the auction, second petitioner was extended privilege to vend, there were orders issued by the competent authorities essentially preventing the sale. It is, therefore, the contention of the petitioners, relying on the decision of this Court, that the second petitioner is not liable to pay kist for the period during which there were orders prohibiting sale.

3. Without going into the realm of the factual disputes, it has to be noticed that following Ext.P3, no necessary

materials could be placed by the petitioner, as also the subordinate departmental officials, before the Commissioner of Excise for a final resolution of the claim of the petitioners that they are entitled to refund and continued attachment imposed on the property of the first petitioner needs to be lifted forthwith to enable her to obtain mutation in terms of the Transfer of Registry Rules. However, these are not matters on which the petitioners could have an exercise before this Court which would essentially be in the realm of settlement of account.

4. For the foregoing reasons, this writ petition is disposed of directing that if the petitioners move the Excise Commissioner in terms of what is stated above, the said request will be taken up by the second respondent and considered and disposed of in accordance with law, after giving the petitioners an opportunity of hearing either through any one of them or

through a duly authorized person or counsel, which shall be considered, having regard to the appropriate precedents of this Court, as may be applicable. Final decision as aforesaid shall be taken within an outer limit of two months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN
Judge

mrcs